

3. Kankakee timely filed its short-form application to participate in the auction (FCC Form 175) and timely submitted an upfront payment in the amount of \$70,000. Mr. Sidney Marks, who served as the President and as a director of Kankakee at that time, appears on Kankakee's short-form application as the certifying official who signed the form.⁷ Kankakee's short-form application lists its counsel, Mr. Richard Hayes, as its point of contact.⁸ Kankakee's short-form application also shows that both Mr. Marks and Mr. Hayes were authorized to place bids on behalf of the applicant.⁹ Subsequently, the Commission released a qualified bidder public notice for Auction No. 62, listing Kankakee as a qualified bidder.¹⁰ Bidding in Auction No. 62 began on January 12, 2006 and ended on January 31, 2006.

4. According to its Request for Waiver, Kankakee's board of directors had designated Mr. Marks to handle its participation in the auction.¹¹ Kankakee had also engaged an attorney to help it prepare for the auction, file its short-form application, and submit its upfront payment.¹² Kankakee asserts that, at some point "after the application was filed and the upfront payment was made," Kankakee decided to proceed without further assistance from its attorney and "informed its communications counsel that his services would not be required."¹³ Kankakee, however, made no change to its short-form application to designate another person as its point of contact.¹⁴ The Request for Waiver states that, about the time that Kankakee decided to participate in the auction, Mr. Marks was accepted into an out-of-town training program for treatment of his medical condition.¹⁵ Kankakee explains that, at some point before the auction closed, Mr. Marks submitted a bid of \$354,000 for the Culver permit and left town to participate in training for his medical treatment "not knowing if Kankakee had won or lost the auction."¹⁶ Mr. Marks did not return from his travel until after "the auction had long since concluded."¹⁷

5. On February 8, 2006, the Bureaus released a Public Notice announcing the close of Auction No. 62 and identifying the winning bidders.¹⁸ The *Closing Public Notice* indicated that Kankakee was the winning bidder for one construction permit, MM-FM389-A, at Culver, Indiana, with

⁷ See Application to Participate in an FCC Auction, FCC Form 175, for Auction No. 62 filed by Kankakee Valley Broadcasting Company, Inc. Short-form applications and other information concerning Auction No. 62 may be viewed at: <http://wireless.fcc.gov/auctions/62/>.

⁸ See Application to Participate in an FCC Auction, FCC Form 175, for Auction No. 62 filed by Kankakee Valley Broadcasting Company, Inc.

⁹ *Id.*

¹⁰ Auction of FM Broadcast Construction Permits, 212 Bidders Qualified to Participate in Auction No. 62, *Public Notice*, 20 FCC Rcd 19937 (MB/WTB 2005).

¹¹ Request for Waiver at 3.

¹² *Id.* at 1.

¹³ *Id.* at 2.

¹⁴ On December 7, 2005, Kankakee amended the contact portion of its application to show that Mr. Hayes's address had changed. After this date, the Commission sent overnight mailings containing Auction No. 62-related information, including registration materials, to Mr. Hayes on behalf of Kankakee at his new address.

¹⁵ Request for Waiver at 3.

¹⁶ *Id.*

¹⁷ *Id.* Kankakee does not state that Mr. Marks returned from his travel only after the deadlines for down payments and filing of long-form applications had passed. However, based on our decision, such a showing by Kankakee would not have altered the outcome in this matter.

¹⁸ Auction of FM Broadcast Construction Permits Closes, Winning Bidders Announced for Auction No. 62, *Public Notice*, 21 FCC Rcd 1071 (MB/WTB 2006) ("*Closing Public Notice*").

its winning bid of \$354,000.¹⁹ In keeping with the Commission's rules, the *Closing Public Notice* declared that each winning bidder was required to have enough funds to cover its down payment on deposit with the Commission's lockbox bank on February 23, 2006.²⁰ As a courtesy to participants in the auction, the Commission sent a copy of the *Closing Public Notice* to all Auction No. 62 qualified bidders, at their addresses of record, via overnight delivery on February 9, 2006. The package for Kankakee was sent to its designated contact person, Mr. Hayes, and it was delivered the following day. The *Closing Public Notice* indicated that, to comply with section 1.2107(b)'s down payment requirement, Kankakee was required to have a down payment amount equal to \$70,800 on deposit with the Commission by February 23, 2006, because the amount that Kankakee had on deposit did not fully cover its down payment obligation.²¹ Kankakee failed, however, to submit any additional amount by the February 23, 2006, deadline. On June 15, 2006, nearly four months after the down payment deadline, Kankakee submitted an additional \$800 in an effort to satisfy its down payment obligation.²²

6. The *Closing Public Notice* also announced that, pursuant to Section 73.5005(a), all winning bidders, including Kankakee, were required to submit a completed long-form application for each construction permit for which they were a winning bidder no later than March 10, 2006.²³ Kankakee failed to file a long-form application for the Culver construction permit and did not pay the required application filing fee until March 2, 2007, almost one year after the application filing deadline.²⁴

7. In its Request for Waiver, dated June 22, 2006, Kankakee asks the Commission to waive the requirement to make its down payment within the time period established by Section 1.2107(b). Kankakee also seeks a waiver of the application filing deadline prescribed by Section 73.5005(a). Kankakee claims that it missed its down payment and long-form application filing deadlines due to inadvertence and lack of awareness of these deadlines.²⁵ Additionally, Kankakee contends that acceptance of a late-filed long-form application is warranted under Commission precedent.²⁶ Finally, Kankakee argues that waiver of the down payment and application filing deadlines in this instance would serve the public interest because it would avoid a substantial delay of the institution of a first local FM service to Culver, Indiana.²⁷

III. DISCUSSION

8. Section 1.2107(b) of the Commission's rules requires that, within ten business days after release of the auction closing notice, each winning bidder submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for its winning bids to twenty percent of the net amount of its winning bids.²⁸ Pursuant to Section 1.3 of the Commission's

¹⁹ *Closing Public Notice*, 21 FCC Rcd at 1084.

²⁰ See *Closing Public Notice*, 21 FCC Rcd at 1071-72; see also *Procedures Public Notice*, 20 FCC Rcd at 10535, citing 47 C.F.R. § 1.2107(b).

²¹ Attachment B of the *Closing Public Notice* advised winning bidders of the exact amounts for deposits due after application of the bidder's upfront payment. *Closing Public Notice*, 21 FCC Rcd at 1093-98.

²² By this payment, Kankakee raised its monies on deposit for its down payment to \$70,800.

²³ See *Closing Public Notice*, 21 FCC Rcd at 1076.

²⁴ Kankakee's application file number is BNPH-20070302ABT and facility identification number is 165323. Kankakee paid a filing fee of \$3,210.

²⁵ Specifically, Kankakee asserts that it did not receive a copy of the *Closing Public Notice* from the Commission. Request for Waiver at 2-4.

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ 47 C.F.R. § 1.2107(b). See *Procedures Public Notice*, 20 FCC Rcd at 10535.

rules, we may waive rule provisions “for good cause shown” by the petitioner.²⁹ As interpreted by the courts, in a request for waiver of a Commission rule, the requesting party must demonstrate that “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”³⁰ In order to demonstrate the required special circumstances, Kankakee must show not only unique or unusual circumstances which differentiates it from all others to which the rule applies,³¹ but also that no reasonable alternative existed which would have allowed Kankakee to comply with this rule.³² Further, Kankakee bears the burden of convincing us that a waiver would not conflict with the policy underlying this rule.³³

9. We are not persuaded that Kankakee has presented any unique facts or circumstances that merit waiving its obligation to submit its down payment for the winning bid within the ten day period required by Section 1.2107(b).³⁴ The Commission has held that “something as common as an employee’s illness does not rise to the level of a unique or unusual circumstance, warranting special consideration by the Commission.”³⁵ Kankakee explains that Mr. Marks was “distracted” by his acceptance into a medical treatment training program, that he left town after submitting a provisionally winning bid while the auction was in progress, and that he did not return until after “the auction had long since concluded.”³⁶ Kankakee states that, upon Mr. Marks’ return from his out-of-town training, he and Kankakee’s station manager then “reviewed the auction materials in his possession,” concluded that a public comment period would occur, and “waited to hear from the Commission regarding the next steps to take.”³⁷ Kankakee does not identify the “auction materials” that Mr. Marks reviewed or provide any additional information regarding the possible source for a belief that such a procedure would occur.³⁸ Nor does Kankakee

²⁹ 47 C.F.R. § 1.3.

³⁰ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”).

³¹ *See Industrial Broadcasting Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970) (To avoid requiring “an agency to carry out extensive waiver proceedings once it has carefully promulgated a general rule a heavy burden traditionally has been placed upon one seeking a waiver to demonstrate that his arguments are substantially different from those which have been carefully considered at the rulemaking proceeding.”). Significantly, the Commission carefully considered, but rejected, requests to delay the down payment deadline to prevent winning bidders from “gaming” the auction processes and reduce speculative bidding. *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348, 2381-82 ¶¶ 191-92 (1994) (“*Competitive Bidding Second Report and Order*”).

³² *See e.g., Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968).

³³ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1155, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 93 S.Ct. 461 (1972) (finding that the Commission may decide in some instances that a rule waiver serves the public interest if an applicant’s proposal will not undermine the policy served by the rule). *See also Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

³⁴ Kankakee’s mere conclusory statement that its circumstances are unique, and thus, not likely to be encountered by other Commission applicants, is not sufficient to satisfy the requirements of *WAIT Radio*. *See Northeast Cellular*, 897 F.2d at 1166, 1167.

³⁵ *Southern Communications Systems, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 25103, 25107 ¶ 9 (2000), *recon. denied, Second Memorandum Opinion and Order*, 16 FCC Rcd 18357 (2001) (“*Southern Order*”) (upholding denial of request for waiver that was based on claim that applicant was unable to wire transfer an auction installment payment due to the illness of its financial officer).

³⁶ Request for Waiver at 3.

³⁷ *Id.*; Request for Waiver, Exhibit B.

³⁸ There are no other Commission comment periods that apply to a winning bidder following the close of an auction. While interested members of the public are permitted to file petitions to deny against long-form license applications that have been accepted for filing, Kankakee had not filed a long-form application at this point.

indicate whether those materials included the *Procedures Public Notice*, which provides a detailed description of winning bidders' post-auction obligations, or copies of the Commission's competitive bidding rules, which govern payment deadlines. Indeed, the *Procedures Public Notice* explicitly instructed Kankakee well in advance of the auction that its down payment would be due ten days after the release of the auction's *Closing Public Notice* and that its long-form application would be due thirty days after release of the same public notice.³⁹ While we are sympathetic to Mr. Marks's personal situation, we cannot find that Mr. Marks's inattention to auction results and post-auction obligations constitute special circumstances that warrant a deviation for Kankakee from the general rule.

10. We find unpersuasive Kankakee's assertion that "Mr. Marks and Kankakee were not aware that it was their responsibility to check for the release of a Public Notice" announcing the close of the auction.⁴⁰ Kankakee is the licensee of two FM broadcast stations, and therefore, should be well aware of the obligation imposed on all Commission licensees to monitor Commission public notices.⁴¹ In addition to a duty to monitor public notices, Kankakee, like all other applicants and licensees, is obligated to know and comply with the Commission's rules.⁴² Even if we were persuaded that Mr. Marks and Kankakee were unaware of their responsibilities relating to the auction, granting waiver of the down payment rule on that basis would undermine the Commission's ability to continue to enforce these requirements.

11. Kankakee attempts to shift responsibility to the Commission for Kankakee's failure to meet its post-auction responsibilities by asserting that it had "received no further communication" from the Commission after the conclusion of the auction.⁴³ In making this assertion, Kankakee fails to acknowledge that the Commission had sent a copy of the *Closing Public Notice* to it via its designated contact person, Mr. Hayes, at his address provided by Kankakee in its short-form application. This overnight delivery was not legally required, but was sent as a courtesy to all qualified bidders in Auction No. 62.⁴⁴ The overnight delivery service provided the Commission with confirmation that the package containing the *Closing Public Notice* was delivered to Mr. Hayes in the same manner as the overnight package containing registration materials that had been delivered to Mr. Hayes just over one month

³⁹ The *Procedures Public Notice*, released more than eight months before the down payment deadline, provided notice to prospective applicants of the ten-day down payment deadline required by Section 1.2107(b), before any auction applications were filed.

⁴⁰ Request for Waiver at 3. In fact, as is customary, the Commission sent overnight delivery packages to Kankakee's designated contact, its counsel, Mr. Hayes, throughout the auction process. See *Procedures Public Notice*, 20 FCC Rcd at 10520 ("Registration materials ... **will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID cards that will be required to place bids....**") (emphasis in original).

⁴¹ Request for Waiver at 1. See *TPS Utilicom, Inc., Order on Reconsideration*, 18 FCC Rcd 2516, 2526 ¶ 18 & n.59 (WTB 2003) ("*TPS Order*").

⁴² "The Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules." Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, *Report and Order*, 12 FCC Rcd 17087, 17099 ¶ 22 (1997) ("*Forfeiture Policy Statement*"). See also 47 C.F.R. § 0.406 (instructing those having business before the Commission to familiarize themselves with pertinent rules and regulations). Moreover, Kankakee specifically was on notice that it was responsible for complying with the Commission's competitive bidding rules. See *Procedures Public Notice*, 20 FCC Rcd at 10497 ("It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.").

⁴³ Request for Waiver at 2.

⁴⁴ See *Macon County Broadcasting, Inc., Memorandum Opinion and Order*, 8 FCC Rcd 8669 (1993) (personal notice of payment deadline not required).

earlier.⁴⁵ Although the Request for Waiver suggests that Kankakee had terminated its relationship with Mr. Hayes prior to the start of the bidding,⁴⁶ Kankakee did not amend to change the contact person listed on its short-form application to report any such change.⁴⁷ Thus, the Commission continued to send overnight deliveries, including the *Closing Public Notice*, to Kankakee via its designated contact, Mr. Hayes.⁴⁸

12. We also reject Kankakee's suggestion that the Commission should have taken additional steps to make Mr. Marks aware of the down payment deadline.⁴⁹ As mentioned above, the Commission sent copies of the *Closing Public Notice* that announced the payment date via overnight delivery to Kankakee's designated contact person, Mr. Hayes. Moreover, as Kankakee acknowledges, the Commission routinely holds seminars prior to each auction to educate potential bidders about auction deadlines, processes and requirements.⁵⁰ These processes and time periods are also described in the *Procedures Public Notice*, which was released nearly seven months prior to the start of the bidding in Auction No. 62.⁵¹ In addition, we reject as frivolous Kankakee's contradictory suggestion that the Commission's practice in making information on the auction process easily accessible via the World Wide Web and through bidders seminars encourages applicants to "save money by skipping the advice of counsel" and thus are "contributing factors" that "play[ed] a role" in Kankakee's failure to meet its down payment and long-form application filing requirements within the time periods specified by the rules.⁵² Following our usual practice, copies of the *Procedures Public Notice* and the *Closing Public Notice* were posted on the Commission's website. Despite its criticism of this practice, Kankakee does not explain why it apparently did not avail itself of this method of freely obtaining those Public Notices.

13. Furthermore, Kankakee fails to discuss how the underlying purposes of Section 1.2107(b) would be served by waiving the payment deadline in these circumstances. The Commission has explained that one of the principal purposes of the requirement of full and timely down payment is "to ensure that bidders are financially capable of constructing and operating their systems," and that "[t]imely payment of both upfront and down payment obligations is one of the best indicators prior to award of licenses of a bidder's *bona fide* ability to pay."⁵³ When it adopted the down payment deadline rule, the Commission considered suggestions to allow a flexible period between auction and payment and rejected

⁴⁵ An overnight delivery sent to Kankakee via Mr. Hayes just prior to the start of the bidding contained registration materials that included security tokens necessary to submit bids. Mr. Marks would not have been able to submit bids in the auction without access to the materials sent in that package. Records of the overnight delivery service confirm that the overnight package containing the *Closing Public Notice* was delivered to Mr. Hayes's address at 11:55 AM on February 10, 2006, approximately 13 days before the down payment deadline.

⁴⁶ Request for Waiver at 2.

⁴⁷ See 47 C.F.R. § 1.5(b) (A Commission "licensee is responsible for making any arrangements which may be necessary in his particular circumstances to assure that Commission documents or correspondence delivered to [an address furnished by the licensee] will promptly reach him or some person authorized by him to act in his behalf.").

⁴⁸ See *supra* note 14.

⁴⁹ Request for Waiver at 2-3.

⁵⁰ See Request for Waiver at 4. Potential bidders who were unable to attend the pre-auction seminar for Auction No. 62 could view a live webcast of the seminar on the Commission's Web site. A recording of the webcast also was available for playback from the FCC's Web site following the seminar.

⁵¹ See *Procedures Public Notice*, 20 FCC Rcd at 10492.

⁵² Request for Waiver at 4.

⁵³ BDPCS, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 17590, 17598-99 ¶ 15, 17598-99 ¶ 16 (2000) ("BDPCS Order"), review denied *BDPCS, Inc. v. FCC*, 351 F.3d 1177 (D.C. Cir. 2003). See also *Mountain Solutions Ltd., Inc. v. FCC*, 197 F.3d 512, 518 (D.C. Cir. 1999) (upholding Commission policy of strict enforcement of down payment deadlines).

them because “[s]uch a procedure could give winning bidders the opportunity to ‘game’ our processes by making an upfront payment, bidding on a license, and then assessing afterwards whether to go forward with the award of the license.”⁵⁴ The Commission observed that “a substantial delay between auction and down payment would subvert our objective of reducing speculative bidding because it would provide financially unqualified bidders with an opportunity to ‘shop’ a winning bid in an effort to obtain financing for a down payment,” and concluded that such conduct “would undermine the integrity of the auction itself.”⁵⁵ Accordingly, the Commission has consistently denied requests for waivers of the initial down payment deadline.⁵⁶ Departure from our policy of strict enforcement of the down payment rule here would conflict with these policies and our ability to meet the Commission’s policy objectives in future auctions.

14. Equally unavailing is Kankakee's reliance on three prior decisions in which waivers of long-form application filing deadlines were granted.⁵⁷ Kankakee argues that these decisions support grant of a waiver where “requesting applicants had complied with previous auction requirements, denial would delay the institution of new service, and the licensee's relatively prompt submission of the long[-]form application after discovery of the missed deadline would not adversely impact the auction process.”⁵⁸ At the outset, we note that none of the three cases Kankakee cites involved a winning bidder who failed to timely make its down payment. The applicants in those cases had complied with the down payment requirement but filed their long-form applications between six and fifteen days after the deadline.⁵⁹ Here, however, Kankakee’s failure to file its long form application until nearly one year after it was due (and over nine months after discovering its error) does not demonstrate the prompt curative action from which we might conclude that “the post-auction licensing process ... was not significantly delayed or materially adversely affected.”⁶⁰

15. We also are not persuaded that Kankakee’s asserted intent to provide first local FM service to Culver outweighs the public interest benefit in consistent enforcement of the Commission’s

⁵⁴ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2381-82 ¶ 192.

⁵⁵ *Id.*

⁵⁶ See *TPS Order*, 18 FCC Rcd at 2520 ¶ 9 (noting that prior to Auction No. 35, the Commission, or its delegated authority, had denied every request to waive any aspect of the first post-auction down payment obligation).

⁵⁷ Request for Waiver at 5, citing *City Page & Cellular Services, Inc., Order*, 17 FCC Rcd 26109 (Com. Wireless Div. 2002), *Silver Palm Communications, Inc., Order*, 17 FCC Rcd 6606 (Com. Wireless Div. 2002), and *Pinpoint Communications, Inc., Order*, 14 FCC Rcd 6421 (Pub. Safety Div. 1999).

⁵⁸ Request for Waiver at 5.

⁵⁹ *City Page & Cellular Services, Inc., Order*, 17 FCC Rcd 26109 (Com. Wireless Div. 2002); *Silver Palm Communications, Inc., Order*, 17 FCC Rcd 6606 (Com. Wireless Div. 2002); *Pinpoint Communications, Inc., Order*, 14 FCC Rcd 6421 (Pub. Safety Div. 1999). In *City Page*, for example, a Bureau licensing division (“Division”) found that “upon discovering that they missed their long-form filing deadlines, [winning bidders] took immediate action to correct their errors and expeditiously prepared and filed their applications.” *City Page*, 17 FCC Rcd at 26110 ¶ 3. In light of these entities’ prior compliance with auction requirements, the particular circumstances presented and the short time periods involved, the Division concluded that “the post-auction licensing process ... was not significantly delayed or materially adversely affected.” *Id.*, 17 FCC Rcd at 26112 ¶ 8. Thus, the Division found that waiver for those applicants “comports with Bureau precedent wherein spectrum auction applicants were granted partial relief for minor, inadvertent post-auction delinquencies that did not disrupt the auction process or undermine the Commission’s policy of facilitating rapid implementation of reliable communications service to the public.” *Id.*

⁶⁰ *Id.*

competitive bidding rules.⁶¹ We note that the not insubstantial licensing delay in this instance is a direct result of Kankakee's failures both to submit its down payment until nearly four months after it was due and to file its long-form application until almost one year after it was due. These failures not only have delayed the institution of service by the station in question, they also evidence a lack of intent by Kankakee to provide timely local FM service to Culver. Thus, none of the arguments presented merit our relieving Kankakee of its obligations pursuant to Sections 1.2107(b) and 73.5005(a) to have made the down payment on its winning bid and file its long-form application by the specified deadlines.

16. Finally, Section 1.2109(b) of the Commission's rules provides that a winning bidder who fails to remit the required down payment within ten business days after the Commission has declared competitive bidding closed will be deemed to have defaulted, its application will be dismissed, and it will be liable for the applicable default payment obligations specified in 47 C.F.R. § 1.2104(g).⁶² Although we cannot determine Kankakee's total default payment at this time, we will assess an interim default payment owed by Kankakee, amounting to three percent of its defaulted net high bid for the Culver construction permit, or \$10,620.00.⁶³ Pursuant to Section 1.2106(e) of the Commission's rules, we will apply Kankakee's payment on deposit to satisfy this interim default payment obligation.⁶⁴

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309, and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, that Kankakee Valley Broadcasting Co., Inc.'s Request for Waiver, dated June 22, 2006, is DENIED.

18. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309, and Sections 1.2107(b), 1.2109(b), and 1.2104(g) of the Commission's Rules, 47 C.F.R. §§ 1.2107(b), 1.2109(b), and 1.2104(g), that Kankakee Valley Broadcasting Co., Inc. is assessed an interim default payment in the amount of \$10,620.00 for the construction permit associated with MM-FM389-A, at Culver, Indiana.

⁶¹ Request for Waiver at 5 and Exhibit B. Kankakee's speculative assertions of benefits to the Culver community are similar to the public interest arguments the Commission previously has rejected. *See, e.g., Southern Order*, 16 FCC Rcd at 18,361 ¶ 9 ("[E]nforcing the Commission's payment rules . . . serves the public interest better than relying on the wholly unsubstantiated possibility that [petitioner] might have provided service in its license area sooner than the successor licensees will.").

⁶² 47 C.F.R. §§ 1.2104(g) and 1.2109(b). A defaulting bidder is required to pay the difference between the amount bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional amount equal to three percent of the defaulter's bid or the subsequent winning bid, whichever is less. 47 C.F.R. § 1.2104(g)(2). In the event the subsequent winning bid is greater than or equal to the defaulted bid, the total default payment is equal to three percent of the winning bid. *Id.* When the default payment cannot be determined because the defaulted construction permit has not yet been auctioned, the Commission assesses an interim default deposit of between three and twenty percent of the defaulted bid amount. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Third Report and Order and Second Notice of Proposed Rule Making*, 13 FCC Rcd 374, 434 ¶ 102 (1997). After subsequent auction of the construction permit, the total default payment will be calculated and the Commission will either assess the final balance or refund any amounts due to the defaulting bidder. *Id.*

⁶³ Consistent with Commission precedent, the disposition of the remaining amount of monies on deposit with the Commission related to this matter will be addressed in a subsequent letter to the payor of record, once a construction permit covering the same spectrum is re-auctioned and the final default payment can be calculated. *See AirCom Communication Consultants, Inc., Order*, 16 FCC Rcd 17685, 17691 n.47 (Pub. Safety Div. 2001), recon. denied *sub nom.*, *AirCom Consultants, Inc., Order on Reconsideration*, 18 FCC Rcd 1806 (Pub. Safety Div. 2003). *See also* 47 C.F.R. § 1.2104(g)(2).

⁶⁴ *See* 47 C.F.R. § 1.2106(e). *See also TPS Order*, 18 FCC Rcd at 2516.

19. IT IS FURTHER ORDERED, pursuant to Sections 1.2104 and 1.2106 of the Commission's rules, 47 C.F.R. §§ 1.2104 and 1.2106, that the funds of Kankakee Valley Broadcasting Co. on deposit will be applied to satisfy the interim default payment obligation.

20. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.2104(g) of the Commission's Rules, 47 C.F.R. § 1.2104(g), that Kankakee Valley Broadcasting Co., Inc. will be subject to the balance of the default payment specified in Section 1.2104(g) of the Commission's Rules, 47 C.F.R. § 1.2104(g), once the actual default payment is determined.

21. This action is taken pursuant to delegated authority under Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Margaret W. Wiener
Chief, Auctions and Spectrum Access Division